IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETIION NO. 1933 OF 2005

Shirish Madhukar Shingane ...Petitioner

Versus

Sou. Shubhangi Shirish Shingane and Ors. ...

Respondents

Mr. A.M. Kulkarni for the Petitioner.
Mr. S.A. Ghaisas for respondent Nos. 1 to 3.
Mrs. S.V. Gajare, A.P.P., for the State-Respondent No.4.

CORAM: **A.M. KHANWILKAR, J.**
DATE: **DECEMBER 13, 2005**.

P.C.

1. Heard Counsel for the parties. Rule, returnable forthwith by consent. Mr. Ghaisas waives notice for respondent Nos. 1 to 3. Mrs. Gajare, A.P.P., waives notice for Respondent No.4-State. As short question is involved, petition is taken up for final hearing forthwith by consent.

2. This petition takes exception to the order passed by the IInd Additional Sessions Judge, Kalyan, dated 30th June, 2005, dismissing the revision preferred by the Petitioner before the said Court being Criminal Revision Application No. 161 of 2002 which in turn challenged the

maintenance order passed by the learned Judicial Magistrate, First Class, Ulhasnagar dated October 4, 2002 in K.A. No. 17/01 directing payment of monthly maintenance allowance to Respondent Nos. 1, 2 and 3 at the rate of Rs.1000/-, Rs. 750/- and Rs.750/- per month respectively from the date of application.

3. It is not necessary to burden the judgment with all the aspects of the case. Suffice it to observe that in so far as finding recorded by the Courts below that the petitioner is liable to maintain Respondent Nos. 1, 2 and 3 is unexceptional. Respondent No.1 is the legally wedded wife of Petitioner. Respondent Nos. 2 and 3 are two daughters born out of the wedlock. The sole question that requires to be considered is about the quantum of maintenance to be paid by the Petitioner to Respondent Nos. 1 to 3. The Courts below have noticed the evidence produced by the Petitioner which discloses his salary of Rs.4,180.16 per month and take home salary of Rs. 3,006.01 per month. However, the Courts below, while directing the Petitioner to pay maintenance at the rate specified earlier, have assumed that the Petitioner must be earning some other income in addition to the amount disclosed in the salary slip. There is no legal evidence to support this finding. In other words, such a finding reached by the Courts below, to say the least, is perverse. Counsel for Respondent Nos. 1 to 3 is unable to produce any positive evidence to substantiate the claim that the Petitioner was earning some other amount, in addition to the amount

reflected in the salary slip. Reliance was placed on the oral evidence of the Petitioner. However, in the cross-examination only suggestions have been given to the Petitioner that he was earning some other perquisites in addition to the amount specified in the salary slip. In cases where specific evidence is produced, it is unsafe to proceed on the basis of assumption. It would have been different matter, if no evidence was produced by the Petitioner to substantiate his claim of monthly income.

4. As mentioned earlier, no positive evidence has been brought on record by Respondent Nos. 1 to 3 to substantiate their claim that the Petitioner had other source of income other than the amount specified in the salary slip. Viewed in this perspective, the finding so reached by the Courts below will have to be overturned to this limited extent. In other words, in view of the evidence on record I will have to proceed on the basis that the monthly take away income of the Petitioner is around Rs.3,000/- per month. On that basis, appropriate amount will have to be specified which the Petitioner will have to part as maintenance amount to Respondent Nos. 1, 2 and 3. For this limited purpose, as is agreed by the Counsel appearing for the parties before this Court, matter is relegated to the trial Court to record a finding on that aspect.

5. Counsel for Respondent Nos. 1 to 3 submits that since matter is remitted to the trial court, Respondent No.1 may be permitted to adduce

further evidence to substantiate the plea that the Petitioner is enjoying additional perquisites or income in addition to the one reflected in his salary slip. If such an application is made, the trial Court may consider the same on its own merits in accordance with law. This order is not an expression of opinion on those matters. In other words, the matter is remanded to the lower Court for the limited purpose of quantifying the amount of maintenance to be paid by the Petitioner to Respondent Nos. 1, 2 and 3 respectively after considering the relevant aspects regarding the established monthly income of the Petitioner. .

6. At this stage, Counsel for the Petitioner submits that the Petitioner may also be permitted to adduce further evidence to establish the position that Respondent No.1 is gainfully employed as per the material now become available with the Petitioner after the decision rendered by the lower Court. If such an application is filed by the Petitioner, the same will be considered by the lower Court on its own merit in accordance with law.

7. The trial Court shall decide the case as expeditiously as possible, preferably within six months from the receipt of writ of this Court. During the pendency of the remittal proceedings, the Petitioner shall continue to pay interim maintenance amount to Respondent Nos. 1 to 3 as ordered by this Court on 31st August, 2005. That payment will be without prejudice to the rights and contentions of the parties in the main proceedings.

8. Rule made absolute on the above terms.

(A.M. KHANWILKAR, J.)